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In the Supreme Court of the United States

October Term, A. D. 1933.

No. .....

In the Matter of MINNIE LERNER, Bankrupt.

MINNIE LERNER,

Petitioner,

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WISCONSIN, JAKE RAKITA, SARAH RAKITA, HARRY BLUMENFELD and DORA BLUMENFELD,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLES, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully submits her petition for a writ of certiorari to review the decision of the Circuit Court of Appeals for the Seventh Circuit in the above case.

Summary Statement of Matter Involved.

The petitioner, Minnie Lerner, was adjudicated a bankrupt on May 22, 1933, and on October 6, 1933, made appli-

cation for a discharge in bankruptcy. On October 10, 1933, notice was given creditors setting November 18, 1933, as the day when creditors might show cause against the discharge (R. 2). On November 17, 1933, respondent, First Wisconsin National Bank of Milwaukee, Wisconsin, filed a notice of appearance in opposition, and a written request to the court to extend the time within which to file specifications to November 28, 1933. On November 18, 1933, respondent, Jake Rakita, et al, filed a notice of appearance in opposition (R. 3).

On November 28, 1933, an order granting creditors time to file specifications was filed (R. 4), and on that date the written specifications of objection to discharge were filed by respondents (R. 4 and R. 9). On December 15, 1933, bankrupt moved to strike the specifications because the same had not been filed within the time limited by General Order 32 (11 U. S. C. A. §53), as amended April 17, 1933 (R. 11), which motion was denied by the District Court (R. 12) on December 16th.

An appeal from the order denying this motion was allowed by the Circuit Court of Appeals on January 4, 1934 (R. 18). Respondents moved to dismiss the appeal (R. 29 and 31), which motions were not granted, the matter being considered on the merits (Decision R. 34), and the District Court's order denying bankrupt's motion to strike the specifications was affirmed by the Circuit Court of Appeals (R. 37). A petition for rehearing was denied June 19, 1934, and a stay of the mandate granted (R. 38).

The bankrupt's motion to strike the specifications was based upon the theory that the District Court had neither authority nor discretion to extend the time within which specifications were to be filed, beyond the date creditors were required to show cause in opposition to the discharge, and that the appearance in opposition and the specifica-

tions were required to be filed on that date and concurrently.

The Circuit Court of Appeals stated, that it was not persuaded that General Order 32 (11 U. S. C. A. §53), as amended, was intended to deprive the court of the power to extend the time for filing specifications and held in result that the District Court might exercise such right of extension in its discretion (R. 34).

The Circuit Court further held that inasmuch as bankrupt's counsel was in District Court on the day creditors were required to show cause upon the application for discharge, and did not object to the extension of time, that bankrupt therefore acquiesced therein. There is nothing in the record to suggest, nor is it a fact that either bankrupt or counsel, or anyone for her were present. This is further indicated by affidavit of one of respondent's attorneys (R. 32), and was pointed out to the Circuit Court on the motion for rehearing, without effecting any change in its original decision.

Questions Presented.

1. Under General Order 32 (11 U. S. C. A. §53), as amended, has the District Court authority to extend the time for the filing of specifications of objections beyond the time of appearance in opposition, and beyond the date set for showing cause against a discharge in bankruptcy?

2. Does the failure of bankrupt to be present or represented on the day when the creditors are required to show cause in opposition to an application for discharge constitute such acquiescence, as a matter of law, as to estop her from challenging the District Court's authority to extend the time to file specifications?

Reasons Relied on for Allowance of the Writ.

1. The Circuit Court of Appeals has decided an important question of bankruptcy procedure which has not, but should be settled by this court.

The primary question presented involves the construction to be given to General Order 32, (11 U. S. C. A. §53), as amended. The procurement of a discharge in bankruptcy is an essential part of the proceedings. This, together with the large number of such proceedings, as well as the effect of a discharge on both debtor and creditor, particularly during these times of economic stress, together with the avoidance of abuses presumably contemplated by the amendment and the benefits sought thereby, all emphasize the importance of the questions presented, and of having an authoritative decision of this court as to the correct construction to be given Order 32, as amended.

The Circuit Court of Appeals has given practically no effect to this amendment. Undoubtedly this court considered the object to be attained by the amendment important enough to warrant the making thereof; equally important, therefore, is its correct application. This may further be inferred from the fact that notwithstanding the various amendments to the Bankruptcy Act, the regulations relative to the subject covered by the amendment had not been materially changed for some sixty (60) years prior to the instant amendment.

2. There already exists considerable uncertainty as to the construction to be placed upon the amendment.

In addition to the Circuit Court's decision here, three[1] District Judges have passed upon the construction to be

[1] **Matter of Harley M. Hodges,** 4 F. Supp. 804 Aff. 70 Fed. (2nd) 243.

Matter of Cornelius J. Corcoran, 4 F. Supp. 988.

In re Gorman, D. C. Western District of South Carolina. No official reporter citation available; found under Sec. 3072 Bankruptcy Law Service of Commerce Clearing House, Inc.

given to Order 32, as amended. One has held that the amendment deprives the court of the board discretion to extend the time for filing specifications, indicating his uncertainty as to the limits of such restriction; the other two held that such amendment leaves the court wholly without authority or discretion to grant an extension. A leading text writer[2] gives no important practical effect to the amendment. A publication[3] having wide distribution among attorneys interested in bankruptcy matters has stressed, as an important change, the requirement that specifications must be filed on the day creditors are required to show cause.

In the short time since the amendment became effective there has already developed the beginning of a division of opinion and uncertainty as to the effect to be given thereto. The costs and delays of litigation in the lower Federal Courts to determine the questions presented, as well as the possible failure to accomplish the object which this court had in making the amendment, can all be avoided by this court granting the writ and passing upon the matter.

3. The Circuit Court has decided an important question of general law in a way probably untenable and apparently in conflict with an applicable decision of this court.

The Circuit Court failed on motion for re-hearing to change the statements of fact relative to the bankrupt's appearance at the time of the hearing notwithstanding that the record clearly shows she was not present or represented. Taking it for granted that the Circuit Court would not be satisfied to decide the case on erroneous facts, the only conclusion is that the correct facts as called to the Circuit Court's attention on rehearing were deemed to support the Circuit Court's conclusion as originally made. The

[2] Remington on Bankruptcy, 4th Ed. Sec. 3201.

[3] American Bankruptcy Review, May, 1933. Vol. IX, Page 279.

decision would therefore rest upon the basis that the absence of the bankrupt on the day creditors are required to show cause in opposition constituted such acquiescence to the order extending time as to prevent the bankrupt from questioning the same by appeal. The Circuit Court's rule as to acquiescence arising from such absence appears to be contrary to the rule applicable thereto. As stated by this court in *Pence vs. Langdon,* 99 U. S. 578, at 581 (italics ours):

> "Acquiescence and waiver are always questions of fact. There can be neither without *knowledge.* The terms import this foundation for such action. *One cannot waive or acquiesce in a wrong, while ignorant that it has been committed.* Current suspicion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action."

Neither the bankrupt's absence, nor her alleged failure to object, as erroneously found by the Circuit Court, furnishes any basis for assuming she had knowledge of facts from which her acquiescence to the order here made might be inferred. The Court's conclusion as to the bankrupt's acquiescence, with the resulting penalty of the loss of bankrupt's right to question by appeal the propriety of the order made, we submit is untenable. This should not be permitted to stand as being a proper declaration of the law on the subjects involved.

WHEREFORE, your petitioner respectfully prays that a writ of Certiorari issue under the seal of this court, to review the decree of the Circuit Court of Appeals of the Seventh Circuit in the above case, and that said decree be reversed.

EMIL HERSH,
Attorney for Petitioner

In the Supreme Court of the United States

October Term, A. D. 1933.

No. .....

In the Matter of MINNIE LERNER, Bankrupt.

MINNIE LERNER,

Petitioner,

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WISCONSIN, JAKE RAKITA, SARAH RAKITA, HARRY BLUMENFELD and DORA BLUMENFELD,

Respondents.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

There was no opinion in the District Court.

The opinion of the Circuit Court of Appeals (R. 34-36) is reported in 70 Fed. (2d) 938.

Jurisdiction.

The decree of the Circuit Court of Appeals sought to be reviewed was entered on May 8, 1934 (R. 37). The

order denying the petition for rehearing was made June 19th, 1934 (R. 38), and a stay of the mandate granted on that day.

The jurisdiction of this court is invoked under Section 240-a of the Judicial Code as amended by the Act of February 13th, 1925.

Statement of Facts.

The facts have been stated in the petition.

Specifications of Errors.

It is submitted that the Court below erred:

1. In holding that General Order 32 as amended left the District Court any discretion to extend time to file specifications.

2. In holding that the bankrupt's absence or failure to object on the show cause date of hearing for discharge constituted such acquiescence as to preclude her from questioning on appeal the propriety of the order extending the time.

3. In affirming the District Court's order denying the bankrupt's motion to strike the specifications.

Summary of Argument.

The court based its decision in part on its general power to extend time for pleadings, instead of arriving at a construction of Order 32 (11 U. S. C. A. §53), as amended, with the aid of applicable rules of construction, Post P. 11

By applying prior decisions to the amended order the court has begged the question whether under a proper construction of the order as amended, such decisions are applicable. No statement is made as to why applicable rules of construction are neither mentioned nor followed. P. 12.

Two changes in Order 32, as amended, appear from the substitution of the provision for appearance and filing of specifications of opposition at the same time on the return day of the notice to show cause against a discharge instead of within the previous ten-day period formerly provided and from the omission of the provision for shortening or enlargement of time. No effect of any consequence to either change is given, yet an intention to make a change is strongly indicated by the change in the language of the order. P. 13.

The words of Order 32 as amended, "at the same time," are unambiguous and effect should be given to their plain import. P. 14.

Effect to each word should be given if possible, which rule is disregarded by the court below. In so doing it arrives at the apparently impossible result of construing, in effect, the words "at the same time" to mean *different* times. Not only are the appearance and filing specifications to be concurrent but the time is definitely fixed as the day when creditors must appear to show cause. P. 15.

The court has also disregarded the elimination in Order 32, as amended, of the provision contained in the order before amendment for the shortening or enlargement of time. Notwithstanding a number of amendments to the general orders this provision was retained until the instant amendment. The deliberate elimination of such provision indicates an intention to deprive the bankruptcy court of its former power to extend the time for filing specifications. To hold otherwise would be to put back by construction the very words eliminated by the amendment. The omission must be assumed to be intentional for similar provi-

sions were inserted or retained in other general orders. P. 16.

The court below, in stating that bankrupt was present and failed to object to the order extending time, has based its decision in a large measure upon a fact demonstratably erroneous on the record. Knowledge of the fact of the entry of the order extending time, and that it was error to do so, are prerequisite to the conclusion that bankrupt acquiesced in the order. P. 18.

The error here occurred without any fact of bankrupt to mislead or influence court or counsel, but was of their own making. P. 19.

Even knowledge of the essential facts should not extend the duty of bankrupt to the point of requiring her to guard her adversaries from committing error. The court's holding that bankrupt's absence or failure to object constituted acquiescence to the order, is not properly declarative of the law. P. 20.

Bankrupt was not required to be present on the return day, and in any case for such reason to deprive her of the right to question the order by appeal, is an unjustified penalty. P. 22.

ARGUMENT.

POINT I.

The court should not have held that General Order 32, as amended, left the court any discretion to extend the time to file specifications of objection to the bankrupt's discharge.

Inasmuch as amended Order 32 was promulgated by the Supreme Court, it would seem superfluous to argue the rules of construction which should be followed by the Court in construing its own order, except that the disregard of such rules form the basis of petitioner's specifications of errors.

General Order No. 32 (11 U. S. C. A. §53) before the 1933 amendment read as follows:

> "A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge."

On April 17, 1933, this order, No. 32, was amended and now reads:

> "A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file

a specification in writing of the grounds of his opposition."

The opinion of the court below is to the effect that inasmuch as the court may in its discretion extend the time for pleadings, and inasmuch as specifications are pleadings, therefore the time to file may be extended. If the statement were that the court in *every case* had such discretion, then it would follow as a matter of logic. As a matter of fact, however, there are various limitations on courts which restrict their general powers such as those relating to pleadings and extensions of time. For example, there are limitations on the time for appeal; limitations of the time within which creditors may file claims; limitations within which petitions for discharge may be filed; limitations within which petitions to revoke a discharge may be filed. The question here is whether Order 32 as amended has become one of the class of orders limiting the powers of the court. The answer depends not upon the general rule relating to the discretion of the court as to pleadings and extensions, but upon the construction which is to be placed upon this Order 32 upon application of established rules of construction.

In connection with the general powers of the court it will be noted that General Order 37 (11 U. S. C. A. §53) has been held not to be applicable to bankruptcy proceedings. *International Harvester Co. vs. Carlsen,* (C. C. A. 8th) 217 Fed 736 at 739. *Brookstone Manufacturing Co.,* (C. C. A. 1st) 239 Fed. 697 at 699.

Decisions prior to the amendment, as mentioned by the court, which hold that the court could enlarge the time for filing specifications must be read in light of the fact that Order 32, prior to amendment specifically provided that

ten days after appearance would be allowed for filing specifications "unless the time shall be shortened or enlarged by special order of the judge." That clause has now been omitted, and accordingly to apply prior decisions is to beg the question whether such decisions are now applicable notwithstanding the changes in the order.

General orders in bankruptcy are to be regarded as the act itself from which it would follow that the same rules for construing an act should be applied in construing the General Orders. That the General Orders are to be regarded as is the statute itself, is held in the *Matter of Brecher,* 4 Fed. (2d) 1001. They have the same force as a provision of the statute. *Wilkenson vs. Waters,* 292 Fed. 395, and cases there cited. None of the rules of construction available are applied or discussed in the opinion; no reason stated why they do not apply; no statement made as to what rules of construction were followed.

There are two distinct changes in Order 32 as amended, compared with this order prior to amendment. First, the amended order states that creditors shall file specifications *at the same time* as the appearance in opposition, upon the day creditors are to show cause, instead of within ten days thereafter, as provided in the Order prior to amendment; second, the provision "unless the time shall be shortened or enlarged by special order of the Judge" contained in previous orders has been omitted entirely in the amendment.

The effect which the Circuit Court of Appeals gives to these changes is not clear. That changes were intended must be inferred from the changes in language made by the amendment. As stated in *Crawford vs. Burke,* 195 U. S. 176, at 190:

"Our own view, however, is that a change in phraseology creates a presumption of a change in intent."

In *Louisville & Nashville Railroad Co. vs. Mottley,* 219 U. S. 467 at 475, in respect to the change in the act there considered, the court says:

"We cannot suppose that this change was without a distinct purpose on the part of Congress."

To apply the language of 25 *R. C. L.* at 1051, to the instant order, rather than to an act of the legislature as there dealth with, the Supreme Court must be presumed to have known both the language employed in former orders, and the judicial construction placed upon them; if in the amended order on the same subject, it uses different language in the same connection, the courts must presume that a change of the law was intended. The court below has stated its opinion of what the amendment did not do. However, it has not indicated what it thought the Supreme Court intended by amending the order notwithstanding that upon the foregoing rules the first presumption to be made is that a change in effect was intended by the change in language.

Where the statute is plain and unambiguous in its terms, the courts must enforce the law as they find it. *Pirie vs. Chicago Title & Trust Co.,* 128 U. S. 438 at 452. The words "at the same time" in Order 32 clearly appear to be plain and subject to but one construction. The words "at the same time" cannot be regarded as superfluous or meaningless. Regard must be had for all words used by the Court, and as far as possible give effect to them. *Louisville, etc., vs. Mottley,* supra, at 475, citing *Market vs. Hoffman,* 101 U. S. 112 at 115, where the court states:

"It is a cardinal rule of statutory construction that significance and effect shall if possible be accorded to every word. As early as in Bacon's Abridgment Sect. 2, it was said that 'a statute ought upon the whole to be so construed that if it can be prevented no clause, sentence or word shall be superfluous, void or insignificant.' "

To like effect *Pirie vs. Chicago Title & Trust Co.*, supra, at 444.

The Circuit Court without discussion of the point, fails to give effect to the plain meaning of the words "at the same time," and in addition fails to give significance to the omission of the prior provision for the ten-day period which the words "at the same time" have substituted. By extending the time for filing specifications, specifications are not filed at the same time as the appearance in opposition, but at different times. This, in application, construes the words "at the same time" to mean "at different times," and would appear to be an impossible construction.

The Circuit Court states that the amended order does not prescribe the procedure in case objections are made within the designated time, suggesting the case where objections are filed in time, but specifications are not. The absence of such provision should have strongly persuaded the court that the order as amended does not contemplate that the filing of specifications might be an act severable in time from the appearance, but must be "at the same time."

Not only must the specifications be filed at the same time as the appearance, but the time referred to is the day when creditors are required to show cause and not some other time later. This gives effect to all words of the order as amended and omissions from the previous order.

A further guide for construction has been disregarded by the Circuit Court in its failure to give significance to the omission of the provision appearing in the prior order, "unless the time shall be shortened or enlarged by special order of the Judge." A number of amendments prior to the instant amendment to the general orders have taken place since Order 32, in its previous form was first in effect, notwithstanding which amendments the provision for enlarging or shortening the time was retained in Order 32 until the present amendment. The fact that such provision has been eliminated from Order 32 is of great significance as indicating a departure from the previous practice of permitting the court in its discretion to shorten or enlarge the time.

This line of argument, though inversely applied, is stressed in connection with a problem before the court in *Manhattan Properties, Inc., vs. Irving Trust Co.*, 291 U. S. 320.

As stated in *Pirie vs. Chicago Title & Trust Co.*, 182 U. S. 438 at 448, in respect to the omission of a phrase in a new act which had previously appeared in a former act:

> "The words in italics are omitted from the Act of 1898. Was the omission without purpose? The omission of a condition is certainly not the same thing as the expression of a condition. Was it left out in words to be put back by construction? Taken from the certainty given by prior use, and prior decisions and committed to doubt and controversy? There is a presumption against it. When the purpose of a prior law is continued, usually it words are, and an omission of the words implied an omission of the purpose."

Had the Supreme Court intended to permit the court to retain the discretionary power to extend time, it would have inserted a provision to that effect, particularly since such provision was already contained in Order 32, as it stood before the amendment. The fact that it was deliberately omitted would seem to allow and practically compel only one conclusion, and, that is, that it was intended to deprive the courts of the discretion they had formerly exercised in connection with the filing of specifications. To hold, that in spite of the amendment, the court still retains a discretion to extend time would be to construe the amended order as if it contained the very provision it was omitting. As quoted above "was it left out in words to be put back by construction?" Obviously not. As indicated in *Guarantee Title, etc., vs. Title Guaranty, etc.,* 224 U. S. 152 at 160, a change in provisions in a certain respect indicates a change of purpose in that respect.

It has been suggested by respondents below, and by Remington (4th Ed. Sec. 3201), and in effect by the court below, that such provision was omitted because unnecessary. This is contrary to the rules of construction above mentioned, and it is significant that while the provision for enlarging time was omitted in amended Order 32, that General Orders V-3, XVII-2 and XXI-3 and L-3 and 4, (11 U. S. C. A. §53) in express language, contain specific provisions that specified action should be limited "unless further time * * * is granted by the court." The failure to so specify in Order 32 becomes significant, and cannot be laid either to an intention of the Supreme Court to economize on words, or that it was careless in neglecting to add such provision; nor can it be argued that the phrase was omitted because there is a general power in the courts to extend the time, for upon the same assumption it could have eliminated the provision for further time as set out

in orders V-3, XVII-2, and the others mentioned above. The obvious and natural construction to the amendment, which gives effect to all changes and omissions, is that the filing of specifications is to be made concurrently with the appearance in opposition, and that the court no longer has any discretion to extend the time for filing specifications to a date beyond that upon which the creditors are required to show cause against the discharge.

POINT II.

The court should not have held that bankrupt acquiesced in an extension of time to file specifications.

The court states in its opinion, and discusses, at length, the fact that bankrupt's counsel was in court on the return day of the order to show cause for the discharge, and that bankrupt's counsel did not object to the order extending time to file specifications. The record does not disclose that either the bankrupt or her counsel were present in court on that day, and the fact is that they were not. Contrary to the statement in the opinion, neither were present to either object or acquiesce to the order then being made. The affidavit of one of respondent's attorneys (R. 32) unequivocably substantiates this fact.

The record does not disclose, nor is it a fact, that either the bankrupt or her attorney knew on the return day or prior thereto, that an order extending the time to file specifications would be asked for or be granted. Even though they acquired such knowledge the earliest possible moment after the return day, it would have been too late to have made any objection, assuming for argument, that there was

any duty on their part to object. As stated in *Pence vs. Langdon*, 99 U. S. 578 at 581 (italics ours):

> "Acquiescence and waiver are always questions of fact. There can be neither without *knowledge*. The terms import this foundation for such action. *One cannot waive or acquiesce in a wrong, while ignorant that it has been committed.* Current suspicion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action."

In addition to having knowledge of the order, it would also seem to be essential that bankrupt should know that the order for extension to be entered was erroneous. There is nothing in the record to indicate that bankrupt or bankrupt's counsel had knowledge of the fact that the filing of specifications was required on the same day as the appearance and the implications from the citation above set forth would indicate that the acquiescence in such order by bankrupt, would necessitate her having knowledge of the law applicable to the order as well as of the fact of its entry.

The Circuit Court emphasizes bankrupt's failure to object. Respondents not only failed to object but moved for the entry of the order upon which the appeal was based. The fact of the matter is that the situation in this case arose by error, probably because of the recentness of the amendment.

Nothing was done by the bankrupt to mislead either the court or objecting creditors. They were free at all times to do whatever they thought was proper under the circumstances; neither advised nor influenced by the bankrupt. Any error in their judgment was wholly their own responsibility. It is not the only situation in which rights of litigants have been affected through mistakes, excusable or

otherwise, of attorneys. There is no reason why bankrupt should be charged with the duty of exercising a supervisory control over the court, or over the objecting creditors' counsel, to see that they conducted the business on hand properly.

Even though bankrupt had knowledge of the facts and was present to object, the lower court's apparent conclusion, that bankrupt's silence amounted to acquiescence, should not be accepted as well founded. In the case of *Spelke vs. Shaw,* 117 Connecticut 639, the Supreme Court at page 646 answered such argument as follows:

> "The most that this record shows is failure of the defendants to object at or before the expiration of the winter session, to further consideration of the case and to rendition of judgment thereafter. Implications from silence or inaction, however, import some duty or occasion to speak or act and in order to imply consent that rendition of judgment in the present case might be deferred beyond the limit of time imposed by statute, there must be found to exist some obligation on the part of the defendants or their counsel either seasonably to admonish the trial judge that the statute must be complied with, or after the second session and before judgment, to interpose objection to its entry thereafter. We find no justification for so far extending the duty of a party or his counsel."

In *Investment Registry vs. Chicago & M. E. R. Co.,* 212 Fed. 594 (C. C. A. 7th) at 604; though not precisely in point, the court held that appellant, even after the entry of an order setting aside a sale because of alleged stifling of competitive bidding, was not held to have deemed to have waived the right to object to such order by appealing there-

from, nor was it to be taken as an admission of wrongdoing, even of inadequacy of the bid. There was more than silence in that case, an affirmative act which might have been construed to have been not only an acquiescence, but an affirmation of the propriety of the order, upon which later an appeal was based.

The fact that respondents' counsel may not have known of the amendment to this order is no excuse for their failure to file specifications on time, nor is there any justification for their shifting the burden of properly conducting the matter to the bankrupt, even though bankrupt knew of the change at the time, which she did not.

In the matter of *United Wall Paper Factories, Inc., vs. Harley M. Hodges,* (C. C. A. 2nd) 70 Fed. (2nd) 243, the objecting creditors did not know of the amendment and further claim to have been misled by the referee, and by a local rule, the court held:

> "The amendment" (to Order 32) "allowed a week for news of it to percolate; an interval plainly thought adequate to inform those interested. If so, the court must have meant that ignorance should not thereafter be an escape from the requirement and we must enforce that purpose. Indeed, were this not so, we should have to decide in each case whether the actual interval had been long enough in reason to charge creditors. Was the single month enough which had here elapsed, or were three or six necessary? On what information might creditors rely, other than the official sources? Such inquiries we conceive to be irrelevant; the law is imperative; all are bound at their peril to learn its commands. It will not stop to ask how far those subject to it have in fact learned their content. There may be

excuses for failing to comply, but ignorance is not one."

To avoid the necessity of reply to respondents we may mention that in the court below respondents insisted that it was the bankrupt's duty to be present on the return day, citing *in re Shanker,* 138 Fed. 862, as authority, and another case inapplicable because based on a local rule. That case relates to the duty of the bankrupt to be present at the *hearing* upon the specifications in opposition pursuant to the provision of Section 7 of the Bankruptcy Act. It may be noted that the appearance is not required on the *return day* of the order to show cause against the discharge, but upon the *hearing.* On such return day specifications may or may not be filed. If filed the time is set for hearing upon the issues raised by the specifications. We submit therefore, that the bankrupt had no duty to be present on the return day of the order to show cause, and if she did, her absence could not confer upon the District Court an enlarged authority to extend the time to file specifications, if such authority had been taken away by amendment to Order 32, as we contend. Further, without special objection to the bankrupt's failure to appear or request for her appearance at the time complained of, we submit that the penalty for such absence is not such resulting acquiescense to an order, if improper, as to preclude her from questioning the propriety thereof by appeal.

Conclusion.

The Circuit Court of Appeals has decided an important question of bankruptcy procedure which, having in mind abuses presumably contemplated to be corrected, and the benefits to accrue from the amendment to Order 32, should

have an authoritative decision of this court as to its correct construction. In arriving at its conclusions, the court below appears to have disregarded all applicable rules of construction, which we submit is an unsatisfactory precedent to be established for construing acts or orders.

The uncertainty already existing as to the correct construction to be given to Order 32 as amended pointed out in the petition herein can be settled by this Court's ruling.

The lower court's ruling upon the question of acquiescence is an important matter of general law which we believe has been improperly declared, and should not be permitted to stand as setting forth the proper rule.

For which reasons petitioner submits that the Writ of Certiorari should be granted.

Respectfully submitted,

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